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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

COUNTY OF FRESNO,

Plaintiff and Respondent,

v.

SEAVIEW INSURANCE COMPANY,

Defendant and Appellant.

F076464

(Super. Ct. No. F16901612)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Brian F. Alvarez, Judge.

Toni L. Martinson for Defendant and Appellant.

Daniel C. Cederborg, County Counsel and Jaspreet Klar, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Poochigian, J. and Peña, J.

## **INTRODUCTION**

Appellant, Seaview Insurance Company, posted bail for a criminal defendant (“defendant”). Defendant, a 91-year-old male, suffered from several medical conditions relating to a major stroke and worsening dementia. After defendant failed to appear, the court forfeited the bail bond. Appellant timely moved to reinstate the bail bond under Penal Code section 1305, subdivision (a),<sup>1</sup> or, alternatively, to exonerate or toll the forfeiture period based on permanent or temporary disability of defendant under subdivisions (d) and (e). The court denied the motion and a motion for reconsideration presenting additional evidence of defendant’s infirmities. On appeal, we reverse and remand to allow the trial court to determine whether appellant had presented sufficient evidence of defendant’s disability to provide relief from forfeiture of the bail bond.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant posted bail in the amount of \$40,000 to secure defendant’s release from custody. Defendant did not appear at an initial hearing on June 21, 2016. His defense counsel notified the court that he had suffered a major stroke and was in an involuntary coma. Counsel presented documentation to the court that defendant was admitted to the intensive care unit of the hospital. The court granted defense counsel’s request to issue a warrant but place it on hold until a future hearing. A second hearing was held August 2, 2016, and again defendant did not appear. Defense counsel informed the court that defendant remained in the hospital and that his prognosis was “not good.” The court continued to hold the warrant and set another hearing in the matter on September 28, 2016. Defendant did not appear at the September 28, 2016 hearing. Although the court noted that defendant was infirm, and defense counsel stated that it was his understanding that defendant was “borderline on hospice care,” the court lifted the stay on the bench warrant and ordered the bail bond forfeited.

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise stated.

On March 29, 2017, appellant filed a motion for three alternative forms of relief. Appellant first sought to reinstate the bail bond under section 1305.1 because there was sufficient excuse for defendant's failure to appear. Alternatively, if the bond was not reinstated, appellant sought to exonerate the bond under section 1305, subdivision (d) based on a showing that defendant was permanently disabled, or at the very least, that the forfeiture period be tolled several months under section 1305, subdivision (e) based on a showing that defendant was temporarily disabled. The County of Fresno ("County") did not oppose the motion for relief filed by appellant. It noted that as defendant was in hospice care, appellant had presented credible evidence that could convince the trial court the bond should be reinstated, exonerated, or tolled. The County stated it would not oppose any of those outcomes should the court determine that relief from forfeiture of the bond was appropriate in light of defendant's health.

A hearing was held on the motion on May 19, 2017. The court described how the records presented to the court indicated that appellant could be released from medical care by a responsible party if his medications were provided. The court acknowledged that while defendant was "infirm[ ] and elderly and in a facility," that he could have been released with a responsible party to attend his court hearing on September 28, 2016. Therefore, the court found that there was sufficient evidence to support its finding to forfeit the bond based on defendant's nonappearance at the court hearing. Moreover, the court was not willing to consider argument to toll the 180-day appearance period.

Appellant filed a motion for reconsideration on May 30, 2017. It attempted to provide additional information regarding the notes in the medical record indicating that defendant could leave the facility if accompanied by a responsible party. Appellant provided a declaration from defendant's wife stating that leaving the facility worsened defendant's health. The court held that appellant was not presenting new or different facts that could not have been presented at the original hearing and denied the motion.

On September 13, 2017, the court entered summary judgment on the forfeiture of the bond.

## DISCUSSION

On appeal, appellant only challenges whether the court erred in not providing tolling of the 180-day appearance period based on defendant's temporary disability under section 1305, subdivision (e).

### I. Law Applicable to Bail<sup>2</sup>

“[E]xcept for capital crimes when the facts are evident or the presumption great,” a criminal defendant has a right to be “released on bail by sufficient sureties . . . .” (Cal. Const., art. I, § 28, subd. (f)(3).) The most common mechanism for obtaining release is a bail bond, which rests upon two different contracts between three different parties: The surety contracts with the government to “ ‘act[ ] as a guarantor of the defendant’s appearance in court under the risk of forfeiture of the bond,’ ” and the defendant contracts with the surety to pay a premium for the bond and to provide collateral in the event of his or her nonappearance. (*People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 42 (*Financial Casualty*), quoting *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657 (*American Contractors*).)

If the defendant does not appear as ordered “without sufficient excuse,” the trial court can declare the bond forfeited in open court (§ 1305, subd. (a)(1)), or, if the court “has reason to believe that sufficient excuse may exist for the failure to appear,” continue the case for a “reasonable” period of time “to enable the defendant to appear” (§ 1305.1). Forfeiture is the general rule. (*Financial Casualty, supra*, 2 Cal.5th at p. 42 [“When the

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<sup>2</sup> On August 28, 2018, the Governor approved Senate Bill No. 10. Senate Bill No. 10 reforms California’s existing system of cash bail. However, it does not go into effect until October 1, 2019. (Sen. Bill No. 10 (2018 Reg. Sess.)) Accordingly, Senate Bill No. 10 does not impact the outcome of this appeal.

surety breaches [its] contract [with the government] by failing to secure the defendant's appearance, the bond generally must be enforced"].)

Once the bond is forfeited, the surety has 185 days to move to vacate the forfeiture and exonerate the bond “[i]f the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture.” (§ 1305, subds. (b)(1), (c).) This is often called the “appearance period.” (*American Contractors, supra*, 33 Cal.4th at p. 658.) The surety may ask for an additional 180-day extension of this period. (§ 1305.4.) Extensions may only be granted for “good cause” (*ibid.*), which turns on the surety’s diligence in tracking down the defendant as well as whether there is “a reasonable likelihood [that] the extension will result in the defendant’s apprehension.” (*Financial Casualty, supra*, 2 Cal.5th at p. 47.)

In addition to granting an extension of time of the appearance period, a party can move the court for exoneration of bail or tolling of the appearance period if the defendant is permanently or temporarily disabled. Section 1305, subdivisions (d) and (e) describe permanent disability as when “[t]he defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities” and temporary disability as “[t]he defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.” (§ 1305, subds. (d, e).)

## **II. Standards of Review**

Bail bond proceedings, despite growing out of criminal prosecutions, “are independent from and collateral to the prosecutions and are civil in nature.” (See *American Contractors, supra*, 33 Cal.4th at p. 657.) It is “well settled that the law disfavors forfeitures, and that this disfavor extends to the forfeiture of bail.” (*People v. Lexington National Ins. Corp.* (2010) 181 Cal.App.4th 1485, 1489 (*Lexington National Ins. Corp.*); *People v. Seneca Ins. Co.* (2010) 189 Cal.App.4th 1075, 1081.) “ ‘The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to

the orders and judgment of the court. In matters of this kind there should be no element of revenue to the state nor punishment of the surety.’ ” (*People v. Far West Ins. Co.* (2001) 93 Cal.App.4th 791, 794–795.)

An order denying a motion to vacate or set aside a forfeiture and exonerate the bail bond is an appealable order. (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 538, 542.) We review the denial of a motion to vacate a bond forfeiture and to exonerate the bond for an abuse of discretion. (*People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369, 378–379; *People v. Accredited Surety & Casualty Co.* (2016) 3 Cal.App.5th 1180, 1184.) “Certain fixed legal principles guide us in the construction of bail statutes. The law traditionally disfavors forfeitures and this disfavor extends to forfeiture of bail. [Citation.] Thus, sections 1305 and 1306 must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture.” (*People v. Surety Ins. Co.* (1985) 165 Cal.App.3d 22, 26.) It is the surety’s burden to prove the statutory prerequisites to an order vacating a bond forfeiture. (*People v. American Contractors Indemnity* (1999) 74 Cal.App.4th 1037, 1041.)

Here, we are specifically tasked with determining whether the court erred by denying the motion to exonerate the bond or, alternatively, toll the bond forfeiture period based on the disability of defendant. “[W]hether the defendant’s disability is permanent or temporary, there is a low threshold of proof. [Citation.] The disability need only be made apparent ‘to the satisfaction of the court.’ (§ 1305, subds. (d), (e).)” (*Lexington National Ins. Corp., supra*, 181 Cal.App.4th at pp. 1490, 1492 [tolling based on temporary disability under section 1305, subdivision (e) need “be satisfied by only the lowest quantum of evidence”]; *County of Los Angeles v. Financial Casualty & Surety Inc.* (2015) 236 Cal.App.4th 37, 44.) Courts have interpreted the language of section 1305, subdivision (e), that the moving party need only show that it “appears” that the defendant is temporarily disabled indicates that the evidentiary showing was low. Whereas the word “show” has been considered “synonymous with ‘establish’ or

‘prove,’ ” “ ‘[a]ppear,’ on the other hand, has been equated with ‘seem’ and ‘ ‘have the semblance or aspect of being; seem or seem likely; without implying reality or unreality.’ ” ” (*People v. Resolute Ins. Co.* (1975) 46 Cal.App.3d 249, 256–257.)

### **III. Analysis**

In support for its motion to exonerate the bond or toll the appearance period based on defendant’s disability, appellant submitted medical records under seal that indicated that defendant was in poor health. A physician noted on a consultation on February 10, 2017, that defendant was being evaluated due to flu symptoms and his altered mental status. The doctor stated that defendant was suffering from worsening dementia. A summary report indicated that defendant suffered from multiple conditions, including, but not limited to, unspecified psychosis not due to a substance or known physiological condition, cerebral infarction, altered mental status, muscle weakness, and difficulty walking. One of the orders listed on the summary, as mentioned by the court, was that defendant “May go on pass ... with responsible party with medications.” With respect to the motion for reconsideration, appellant provided additional evidence in the form of a declaration from defendant’s wife. She described how defendant “is in hospice care and absolutely unable to take care of himself even the slightest bit.” Defendant is “incontinent, sleeps pretty much all day long and most of the time does not know where he is or why he can’t go home.” Defendant’s wife explained that he was not capable of leaving the facility and was “holding on to life.”

Interestingly, while section 1305 allows for relief due to permanent or temporary disability based on “illness, insanity, or detention,” no California court decision has addressed what constitutes such a disability. Accordingly, there is no described threshold, or for that matter, other analogous cases to compare defendant’s illness to determine whether it would qualify as a temporary or permanent disability. Here, despite acknowledging that defendant was infirm and was being held in a skilled nursing facility, the court summarily denied appellant’s request for tolling based on defendant’s health.

Regardless of the showing required, the court abused its discretion in failing to consider appellant's health at all in determining whether defendant was suffering from a temporary or permanent disability that prevented him from appearing in court. As described, the threshold of proof required to show that a disability exists is low. (*Lexington National Ins. Corp.*, *supra*, 181 Cal.App.4th at p. 1490.) Appellant provided documentary evidence with the motion, in the form of defendant's medical records, that indicated defendant was in poor mental and physical health. To the extent that the court found that there was no evidence to support a showing that defendant was sufficiently disabled to provide for tolling, it made no record of its decision. Alternatively, if the trial court could not determine from the records presented whether defendant's illness was sufficient to warrant tolling, it abused its discretion in denying the motion.

The law disfavors forfeitures, including that of bail. (*Lexington National Ins. Corp.*, *supra*, 181 Cal.App.4th at p. 1489.) And the showing of disability need only be made apparent to the satisfaction of the court based on "only the lowest quantum of evidence." (*Id.* at pp. 1490, 1492.) The fact that appellant may have been able to leave the nursing facility with a responsible person was not determinative as to whether defendant was not sufficiently disabled. The trial court did not inquire as to what level of care defendant would require if removed from the facility or if he could safely leave the facility for a sufficiently long enough period of time to be held on the warrant. Having presented the court with pertinent evidence of disability, it was incumbent on the court to determine whether it appeared defendant was disabled. Likewise, had the court found that the record was insufficient to determine whether appellant was disabled, it could have requested and reviewed additional evidence. Accordingly, we conclude that the matter must be remanded for the trial court to consider the evidence presented to determine whether defendant was either permanently or temporarily disabled within the meaning of section 1305, subdivisions (d) and (e).



## **DISPOSITION**

The order denying appellant's motion to exonerate the bail bond or toll the appearance period is reversed and remanded. On remand, the trial court shall consider evidence and arguments as to whether defendant was permanently or temporarily disabled from appearing within the meaning of section 1305, subdivision (d) or (e). If the court finds defendant to be permanently or temporarily disabled, the trial court shall vacate summary judgment, vacate the forfeiture and exonerate the bond or toll the appearance period, respectively. If disability is not established, the trial court shall deny the motion.

In the interest of justice, no costs are awarded on appeal.<sup>3</sup> (Cal. Rules of Court, rule 8.278(a)(5).)

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<sup>3</sup> The County did not oppose appellant's request for relief from forfeiture of the bond. As the County did not oppose the motion in the trial court or this appeal, it requested that it not be subject to costs. In response, appellant withdrew its request for costs on appeal.